



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Mountain  
Plains  
Region

1244 Speer Boulevard  
Denver, CO  
80204-2581

MAR 25 2003

Reply to  
Attn of:

SP-03-13

Subject:

Use of Free and Reduced Price Data, Including Data from Provision 2 and 3  
Schools, for Implementation of the No Child Left Behind Act

To:

STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Missouri ED,  
(Special Nutrition Programs) Montana OPI, Nebraska, North Dakota,  
South Dakota, Utah and Wyoming

We are reissuing two memorandums that have previously been issued to you from our National Office in order to place them in our own regional office numbering system. Each of them addresses the use of free and reduced price eligibility information for students to be used to disaggregate student assessment scores, to determine student eligibility for supplemental educational services, and, under certain circumstances, to prioritize opportunities for public school choice, under the No Child Left Behind Act. The first of the two memorandums was issued on December 17, 2002, and the second, which addresses the use of free and reduced price information in schools operating Provisions 2 and 3 of the National School Lunch Program, was issued on February 20, 2003.

If you have any questions, please contact our office at (303) 844-0355.

*[Signature]*  
for DARLENE SANCHEZ  
Regional Director  
Special Nutrition Programs

Attachments (2)



DEC 17 2002

Dear Colleague:

As schools across the country begin to implement the *No Child Left Behind Act* (NCLB), the milestone elementary and secondary education legislation signed into law by President Bush at the beginning of 2002, a number of school officials have raised questions about the use of student information collected pursuant to the National School Lunch Program in carrying out provisions of Title I of the Elementary and Secondary Education Act, as reauthorized by NCLB. The purpose of this letter is to respond to those concerns.

Educators have specifically asked whether it is permissible to use information from the school lunch program in disaggregating student assessment scores, in determining student eligibility for supplemental educational services, and under certain circumstances, in prioritizing opportunities for public school choice.

Title I, Part A of the Elementary and Secondary Education Act (as reauthorized by the *No Child Left Behind Act*)

States and local educational agencies (LEAs) receiving funding under Title I, Part A must assess and report on the extent to which students in schools operating Title I programs are making progress toward meeting State academic proficiency standards in reading or language arts and in mathematics. Title I now requires States and LEAs to measure and report publicly on the progress of all students, and of students in various population groups, including students who are economically disadvantaged. If assessment results show that any of the groups has not made adequate yearly progress toward meeting State achievement standards for two consecutive years, the LEA must identify that school as needing improvement. All students attending the school must be given the opportunity to attend other public schools that have not been identified as needing improvement, with priority given to the lowest-achieving students from low-income families. In addition, once a school has failed to make adequate yearly progress for three years, the LEA must provide economically disadvantaged students who attend that school the opportunity to obtain supplemental educational services from a nonprofit, for-profit, or public provider.

For many LEAs, information from the National School Lunch Program is likely to be the best, and perhaps the only source of data available to hold schools accountable for the

achievement of "economically disadvantaged" students, and also to identify students as eligible to receive supplemental educational services or to receive priority for public school choice. Moreover, in the case of the priority for public school choice and eligibility for supplemental educational services, the law specifically requires LEAs to use the same data they use for making within-district Title I allocations; historically, most LEAs use school lunch data for that purpose. After examining these new requirements, State and local officials have inquired as to whether they may use school lunch data to meet these requirements while remaining in compliance with the student privacy provisions of the National School Lunch Act.

### National School Lunch Act

Section 9 of the Richard B. Russell National School Lunch Act (NSLA) establishes requirements and limitations regarding the release of information about children certified for free and reduced price meals provided under the National School Lunch Program. The NSLA allows school officials responsible for determining free and reduced price meal eligibility to disclose *aggregate* information about children certified for free and reduced price school meals. Additionally, the statute permits determining officials to disclose *the names of individual children* certified for free and reduced price school meals and the child's eligibility status (whether certified for free meals or reduced price meals) to persons directly connected with the *administration or enforcement of a Federal or State education program*. This information may be disclosed without parental consent.

Because Title I is a *Federal education program*, determining officials may disclose a child's eligibility status to persons directly connected with, and who have a need to know, a child's free and reduced price meal eligibility status in order to administer and enforce the new Title I requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials must keep in mind that the intent of the confidentiality provisions in the NSLA is to limit the disclosure of a child's eligibility status to those who have a "need to know" for proper administration and enforcement of a Federal education program. As such, we expect schools to establish procedures that limit access to a child's eligibility status to as few individuals as possible.

We urge school officials, prior to their disclosing information on the school lunch program eligibility of individual students, to enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and educational officials) would adhere. This agreement would specify the names of the individuals who would have access to the information, how the information would be used in implementing Title I requirements, and how the information would be protected from unauthorized uses and third-party disclosures, and would include a statement of the penalties for misuse of the information.

### Other Provisions

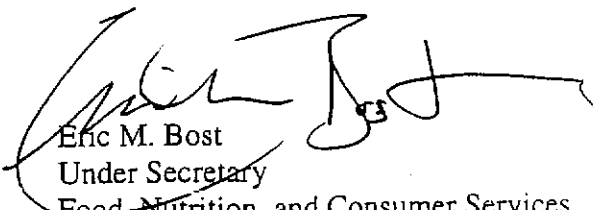
We also note that NCLB did not alter other provisions of Title I under which school officials have historically made use of National School Lunch Program data. LEAs are still required to rank, annually, their school attendance areas, by percentage of students from low-income families, in order to determine school eligibility and to make Title I within-district allocations based on the number of poor children in each school attendance area. They must also determine the amount of funds available to provide services to eligible private school students within the district, again using data on students who are from low-income families. Many LEAs have, for many years, used National School Lunch Program data in making these calculations, which do not involve the release of information on the school lunch eligibility of individual students. They may continue to do so under the new law, while respecting the limitations on the public release of those data described above.

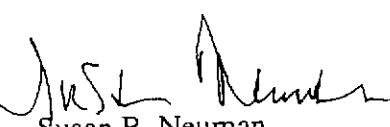
We hope the above information clarifies what we know has been a matter of great concern in States and school districts. If you desire more detailed information about public school choice and supplemental educational services, it can be found at <http://www.ed.gov/offices/OESE/asst.html>.

We will also be providing guidance on Provisions 2 and 3 of the National School Lunch Program and the impact of NCLB on those provisions in the near future.

If we can be of further assistance, please contact one of our offices.

Sincerely,

  
 Eric M. Bost  
 Under Secretary  
 Food, Nutrition, and Consumer Services  
 U.S. Department of Agriculture

  
 Susan B. Neuman  
 Assistant Secretary for  
 Elementary and Secondary Education  
 U.S. Department of Education



FEB 20 2003

Dear Colleague:

This is a follow-up to our letter of December 17, 2002, in which we promised to provide guidance on the implementation of the new requirements of Title I of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act (NCLB), by schools that operate school lunch programs under Provision 2 and Provision 3 of the National School Lunch Program.

As noted in our earlier letter, States and local educational agencies (LEAs) receiving funding under Title I, Part A of the ESEA must assess and report annually on the extent to which students in schools operating Title I programs are making progress toward meeting State academic proficiency standards in reading or language arts and in mathematics. States and LEAs must also measure and report publicly on the progress of all students, and of students in various population groups, including students who are economically disadvantaged. If assessment results show that any of the groups has not made adequate yearly progress toward meeting State achievement standards for two consecutive years, the LEA must identify that school as needing improvement. All students attending the school must be given the opportunity to attend other public schools that have not been identified as needing improvement, with priority given to the lowest-achieving students from low-income families. Once a school has failed to make adequate yearly progress for three years, the LEA must provide economically disadvantaged students who attend that school the opportunity to obtain supplemental educational services from a non-profit, for-profit, or public provider.

For many LEAs, information from the National School Lunch Program is likely to be the best, and perhaps the only, source of data available to hold schools accountable for the achievement of "economically disadvantaged" students, and also to identify students as eligible to receive supplemental educational services or to receive priority for public school choice. Moreover, in the case of the priority for public school choice and eligibility for supplemental educational services, the law specifically requires LEAs to use the same data they use for making within-district Title I allocations; historically, most LEAs use school lunch data for that purpose. As we outlined in our original letter, school lunch data may be used for these purposes. However, using school lunch data in schools that have implemented Provision 2 or 3 of the school lunch program poses issues that require further explanation, because these schools do not determine free and reduced price lunch eligibility on an annual basis.

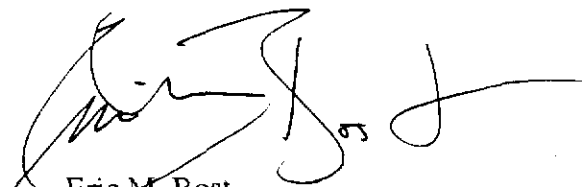
The National School Lunch Act allows schools that offer students lunches at no charge, regardless of individual students' economic status, to certify students as eligible for free and reduced price lunches once every four years and longer under certain conditions. These alternatives to the traditional requirements for annual certification, known as "Provision 2" and "Provision 3," reduce local paperwork and administrative burden. The school lunch regulations prohibit schools that make use of these alternatives from collecting eligibility data and certifying students on an annual basis for other purposes. This prohibition has raised issues about how such schools can obtain the data they need to disaggregate Title I assessment data, identify students as eligible for supplemental educational services, and determine which students receive priority for public school choice, all of which Title I requires be done annually.

We have determined that, for purposes of disaggregating assessment data and for identifying students as "economically disadvantaged" in implementing supplemental educational services and the priority for public school choice, school officials may deem all students in Provision 2 and 3 schools as "economically disadvantaged." In addition, when determining Title I eligibility and allocations for a Provision 2 or 3 school, LEA officials may assume that the school has the same percentage of students eligible for free and reduced price lunches as it had in the most recent year for which the school collected that information.

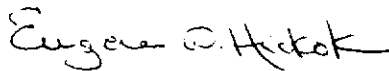
We hope this guidance clarifies this issue. For more detailed information about public school choice and supplemental educational services please see <http://www.ed.gov/offices/OESE/asst.html>.

If we can be of further assistance, please contact one of our offices.

Sincerely,



Eric M. Bost  
Under Secretary  
Food, Nutrition, and Consumer Services  
U.S. Department of Agriculture



Eugene W. Hickok  
Under Secretary  
U.S. Department of Education